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\* Application for leave to appear pro  
hac vice for this case made by Motion on  
February 11, 2008 pursuant to Local Civil  
Rule 1.3(c).

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**X**

**TOM OGNIBENE, *et al.*,**

***Plaintiffs,***

**-against-**

**C.A. No. 08 CV 01335 (LTS) (TDK)**

**SCHWARZ, *et al.*,**

***Defendants.***

**X**

**AMENDED DECLARATION OF TOM OGNIBENE**

I, Tom Ognibene, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am an attorney. I am over eighteen years of age and my statements herein are  
based on personal knowledge.

2. I have run for office and have held a seat on city council previously. From 1991 through 2001 I was the Minority Leader.

3. On April 11, 2008, I executed my original declaration in support of Plaintiffs' Motion for Preliminary Injunction in the matter of Ognibene v. Schwarz (C.A. No. 08 CV 01335 (LTS) (TDK)), pursuant to 28 U.S.C. § 1746.

4. On or about April 21, 2008, I filed my petition to enter the 2008A Special Election for City Council District 30. I am therefore filing this Amended Declaration to clarify how the challenged laws infringe upon my rights under the United States Constitution.

**Declaration Pertaining to the 2008 Special Election**

5. Because of the limited time to raise funds for this Special Election, I elected to run as a participating candidate.

6. For the Special Election, I would like to solicit and accept contributions in excess of \$250 from those having business dealings with the city, up to the contribution limit imposed by section 3-703(1)(f) of the Code. I cannot, however, because of section 3-703(1-a) of the Code. I would also like to solicit and accept contributions from limited liability companies, limited liability partnerships, and partnerships, but cannot because of section 3-703(1)(l) of the Code. I expect that I will receive a substantial portion of my financial support from those having business dealings with the city. I also expect that I would receive substantial support from limited liability companies, limited liability partnerships, and partnerships, if they were allowed to contribute. I do not believe that I will receive substantial support from labor organizations.

7. Because of the rules governing Special Elections, the city council seat for which I am running in the Special Election will again be up for election in November 2008. The seat will

also be up for election in November 2009. Regardless of what happens in the 2008 Special Election, my current plan is to run for this seat in November 2009.

**Declaration Pertaining to the November, 2008 Election**

8. If I win the 2008 Special Election, I will immediately begin campaigning to retain the seat in the November 2008 election. I would like to run as a non-participating candidate. However, because of the drastically lower limits set for those having business dealings with the city, I may be forced to enter public financing for that race as well.

9. I expect that I will receive a substantial portion of my financial support from those having business dealings with the city. I also expect that I would receive substantial support from limited liability companies, limited liability partnerships, and partnerships, if they were allowed to contribute. I do not believe that I will receive substantial support from labor organizations.

10. I would like to solicit and accept contributions in excess of \$250 from those having business dealings with the city, up to the contribution limit imposed by section 3-703(1)(f) of the Code. I cannot, however, because of section 3-703(1-a) of the Code. I would also like to solicit and accept contributions from limited liability companies, limited liability partnerships, and partnerships, but cannot because of section 3-703(1)(l) of the Code.

**Declaration Pertaining to the November 2009 Election**

11. I plan to run for city council member for the 30th Council District in the 2009 election as a non-participating candidate.

12. In the 2009 election, I expect that I will receive a substantial portion of my financial support from those having business dealings with the city. I also expect that I would

receive substantial support from limited liability companies, limited liability partnerships, and partnerships, if they were allowed to contribute. I do not believe that I will receive substantial support from labor organizations.

13. For the 2009 election, I would like to solicit and accept contributions in excess of \$250 from those having business dealings with the city, up to the contribution limit imposed by section 3-703(1)(f) of the Code. I cannot, however, because of section 3-703(1-a) of the Code. I would also like to solicit and accept contributions from limited liability companies, limited liability partnerships, and partnerships, but cannot because of section 3-703(1)(l) of the Code.

**Declaration Pertaining to All Elections**

14. Sections 3-703(1-a) and 3-703(1)(l) deprive me of my constitutional rights under the First and Fourteenth Amendments to the United States Constitution. I will suffer irreparable harm if their enforcement is not enjoined. I have no adequate remedy at law.

15. Because candidates are currently raising funds for the 2008 Special Election, the 2008 election, and the 2009 election, it is imperative that the Court grant relief immediately. Every day that passes without judicial relief is another day that I cannot raise contributions from those having business dealings with the City up to the limits allowed to other contributors. It is another day that I am prohibited from soliciting contributions from LLCs, LLPs, and partnerships. I need money to spend on my campaign, to get my message out to the public. Every day that passes without judicial intervention is another day that I am hindered in my ability to raise the money that will enable me to do that.

16. I declare under penalty of perjury that the foregoing statements in this declaration are true and correct to the best of my knowledge, information, and belief.

Executed on May 14<sup>th</sup>, 2008.

A handwritten signature in black ink, appearing to read 'Tom Ognibene', written over a horizontal line.

Tom Ognibene  
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